

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SOVERAIN SOFTWARE LLC,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CDW CORPORATION, NEWEGG)	Civil Action No. 6:07-CV-00511-LED
INC., REDCATS USA, INC.,)	
SYSTEMAX INC., ZAPPOS.COM,)	
INC., REDCATS USA, L.P., THE)	
SPORTSMAN'S GUIDE, INC., and)	
TIGERDIRECT, INC.,)	
)	
Defendants.)	
)	

**DEFENDANT NEWEGG'S OPPOSITION TO SOVERAIN'S
EMERGENCY MOTION TO STRIKE NEWEGG'S SUPPLEMENTAL
SUBMISSION OF DEMONSTRATIVE EVIDENCE**

Newegg strongly disagrees with Soverain's characterization of the circumstances surrounding Newegg's supplemental submission of Mr. Bakewell's demonstrative visual aids (Dkt. No. 425).

There are no additional facts, data, evidence, or analysis in Mr. Bakewell's supplemental declaration that were not present in his original declaration of June 7, 2010 (Exhibit 1 to Dkt. No. 412). The supplemental declaration merely provides the Court with demonstratives that depict certain aspects of Mr. Bakewell's original declaration, to the extent that their value as visual aids will be helpful to the Court. Newegg expressly directed the Court's attention to Mr. Bakewell's original declaration on several occasions during the post-trial hearing, and provided these demonstratives for their efficacy in communicating the substance of Mr. Bakewell's expert analysis therein.

In view of the above, Newegg's supplemental submission was certainly not "a bold-faced attempt to circumvent the Local Rules of this Court and the Federal Rules of Evidence in order to sandbag Soverain with testimony and evidence of Newegg's damages expert." Soverain's Motion to Strike, Dkt. No. 426, at 2. Indeed, Soverain already had at least two opportunities to respond to Mr. Bakewell's original declaration: once in its reply brief, and again at the post-trial hearing.¹

To the extent any leave of Court is required for Newegg's supplemental submission to be considered by the Court, it is hereby respectfully requested.

Respectfully submitted,

Dated: July 2, 2010

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¹ Soverain further could have cross-examined Mr. Bakewell at the post-trial hearing, where Newegg sought to offer testimony in accordance with his original declaration, but instead Soverain objected to his being permitted to testify at all.

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Certificate of Service

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being hereby served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on July 2, 2010, or will be served via electronic mail. All other counsel of record will be served via facsimile or first class mail.

/s/ Kent E. Baldauf, Jr.

Kent E. Baldauf, Jr.